IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.569 OF 2002
IN
SUIT NO.199 OF 1975

Indrabahadursingh Vishwanathsingh ..Plaintiff

Vs.

Dhananjaysingh Raghurajsingh & Ors. ..Defendants

And

Nandkishoresingh & Ors. ..Applicants

Mr.S.V.Masurkar for the applicants

Mr.M.L.Bansal for defendant no.1

CORAM : S.U.KAMDAR, J
DATED : 21ST APRIL, 2006

P.C.:

. The present Chamber Summons is for condonation of delay and for bringing legal heirs of plaintiff on record. Though it is true that plaintiff died in 1997 whereas the application is taken out in 2002 but in my opinion the statement made in affidavit in support of Chamber Summons that there was a Chamber Order taken out and same was not traceable and accordingly suit itself was

dismissed as abated. Furthermore, in view of the fact that I have by my order dt.29.7.05 passed in Notice of Motion no.768 of 2005 restored the suit by imposing heavy cost of Rs.50000/- in my opinion, the case is made out for setting aside abatement. In the light of the judgment of the Apex Court in the case of Mithailal Dalsangar Singh and Ors. Vs. Annabai Devram Kini and Ors. reported in AIR 2003 SC 4244 para 9 of the Judgment, it is necessary that the present Chamber Summons is to be allowed. However, it cannot be without payment of cost. Chamber Summons made absolute in terms of prayer clause (a) and (b) and (c). Applicant to pay cost quantified at Rs.5000 to the advocate for the defendant no.1 in respect of the present Chamber Summons. Amount of cost which was refunded by defendant no.1 pursuant to order dt.19.1.06 is directed to be paid over to Maharashtra State Legal Services Authority by the Prothonotary and Senior Master, High Court, Bombay. S.O to 4.8.06.